

Tarsha Howard

From: Dave Plummer [Dave@xeriton.com]
Sent: Wednesday, January 16, 2008 4:58 PM
To: Brian Brisnehan
Subject: RE: Microsoft Patent Application (MS Ref 97172.06) - Rule 131 Declaration for Signing

Hi Brian,

While I'm happy to help in principle, I have two problems with this one:

- 1) The best I would ever warrant would be something like "based on supplied information and belief", not "true" under penalty of perjury
- 2) I have nothing to substantiate any dates, since I obviously don't have the source code or email trail from the time. I can refer to the exhibits and so forth, but I don't know them to be any more accurate than the court would
- 3) I'm probably not in a position to say whether a particular independent claim is supported by an exhibit. That's a question for the court or the patent examiner, and while I might have an opinion, see (1) above

Is this related to some current or expected litigation? If so, and its truly highly priority, I'm willing to have you work with my current patent counsel (Richard Black of Black, Lowe, and Graham) to sort out what I'm comfortable swearing behind if MS covers the expense.

- Dave

From: Brian Brisnehan [mailto:BBrisnehan@bannerwitcoff.com]
Sent: Wednesday, January 16, 2008 12:17 PM
To: davidba@exmft.com; Dave Plummer; josephhmatthews@hotmail.com
Cc: Brian Brisnehan; Tarsha Howard
Subject: Microsoft Patent Application (MS Ref 97172.06) - Rule 131 Declaration for Signing

ATTORNEY CLIENT COMMUNICATION- PRIVILEGED/CONFIDENTIAL

Re: U.S. Patent Application No.: 10/825,299
Entitled: User Friendly Remote System Interface
Our Ref.. 003797.00923

Joseph, David, and David,

Please find attached a Declaration under 37 CFR 1.131 and Exhibits A-C for each of you to review, sign, and return. As the named inventors for the Microsoft patent application entitled "USER FRIENDLY REMOTE SYSTEM INTERFACE", this declaration allows you to attest to the fact you conceived of the claimed invention prior to August 25, 1997 (the filing date of another patent application that we are trying to "swear behind"), and that you and your patent attorneys diligently pursued preparation and filing of the application during the relevant time period from August 25-27, 1997. Your attestations are supported by the evidence attached as Exhibits A-C, which include a copy of a draft application prepared by us prior to August 25, 1997, and correspondence between you and our firm to evidence the prior conception date and diligence. As you can see, we have redacted the dates from Exhibit B, so I've attached an non-redacted copy so you can verify that these dates are in fact prior to August 25, 1997.

I think I've discussed this which each of you already (directly or indirectly), and the rest of the document should be is self-explanatory, but please don't hesitate to contact me should you have any questions or comments.

We ask that you each review the attached Declaration, including Exhibits A-C. Should you agree with the statements made in the Declaration, we ask that you sign and date the Declaration and return the same to us (without the exhibits). Please return a copy of the signed Declaration to us as soon as possible by facsimile (202-824-3824), or alternatively scanning and emailing the signed document. Please note that each of you need not sign the exact same document, i.e., you can each print out a separate copy, sign and date it, and send it to us. If possible, please try to return your signed declarations to us by next Tuesday, **January 21, 2008**, so that we may prepare the filing documents and file the Declaration at the USPTO in advance of the upcoming due date.

Also, I have attached a copy of the pending claims in the patent application so that you can review the claims in connection with your review of the Declaration and Exhibits A-C.

Please let me know if you have any questions or comments, and I look forward to hearing from you soon.

Best regards,
Brian

Brian Brisnehan
Banner & Witcoff, Ltd.
1100 13th Street, N.W.
Washington, D.C. 20005
Main Tel.: 202.824.3000
Direct Tel.: 202.824.3324
Direct Fax: 202.824.3824
bbrisnehan@bannerwitcoff.com

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